

**Summary of IDEM Workgroup Meeting
ANTIDEGRADATION/OSRW**

Friday, November 21, 2003

Tippecanoe County Office Building, 20 N. 3rd St., Lafayette, Indiana
10:00a.m. – 3:00p.m. E.S.T.

Introduction:

On Friday, November 21, 2003, IDEM staff met for the thirteenth time with a wide cross-section of stakeholders which make up the Antidegradation/OSRW workgroup. These notes are intended to be a summary of the major points from the meeting held at the Tippecanoe County Office Building.

The meeting was called to order by Mary Ellen Gray.

Workgroup members in attendance for all or part of the meeting included: Art Umble; Bill Beranek; Bowden Quinn; Charlotte Read; Jane Dustin (by speakerphone); Neil Parke; and, Ralph Roper.

Other participants included: Albert Ettinger, Environmental Law and Policy Center (ELPC) and Sierra Club; David Pfeifer, U.S.EPA, Region 5; Kari Evans, Barnes & Thornburg; and, Rae Schnapp, Hoosier Environmental Council.

In addition, the following IDEM staff members were present for all or part of the meeting: Dave Kallander, Larry Wu, Lonnie Brumfield (by speakerphone), and Meredith Kostek.

Summary:

After introductions, the workgroup discussed the following:

- A. Mary Ellen Gray reviewed the agenda for the meeting. Charlotte Read confirmed that Albert Ettinger's document was distributed to the workgroup members.
- B. The meeting minutes from the October 20, 2003 workgroup meeting were approved with one change. Neil Parke's name was spelled incorrectly. Charlotte asked that the proposed changes to 327 IAC 2-1.3-6: "(d)(8) New or increased discharges subject to general permits under 327 IAC 15-5 and 327 IAC 15-6" and "(d)(9) New or increased discharges subject to general permits under 327 IAC 15-7 through 327 IAC 15-12" be added to the list of unresolved issues in the minutes. The change will be made and the minutes will be posted to the web.
- C. Dave Kallander introduced the de minimis topic reminding the workgroup that the de minimis language was introduced in the 1999 draft. Neil Parke stated the Region 8 guidance came out in 1993, prior to the GLI, which had a greater discussion.

1. A discussion took place concerning various de minimis issues: unused loading capacity (the basis for ten percent in West Virginia), common law doctrine (for a “trifle”), using assimilative capacity, establishing a “cap”, and impact on “zero flow” streams. Those participating in the discussion included: Dave Kallander, Neil Parke, Bill Beranek, Dave Pfeifer, Meredith Kostek, Kari Evans, Albert Ettinger and Jane Dustin.
 2. Ralph Roper proposed basing the de minimis on the water quality standard. A benefit would be that dilution would not be a factor. This prompted a lengthy discussion which also involved: Art Umble, Albert Ettinger, Bowden Quinn, Dave Pfeifer, Jane Dustin, Rae Schnapp, Bill Beranek, Neil Parke, Dave Kallander, Charlotte Read, Lonnie Brumfield and Mary Ellen Gray. Discussion issues included: taking the loading capacity out of the equation may make it easier; sounds like you are adding a fudge factor; how are you going to cap any parameter without a lot of studies?; some pollutants do not have a numeric limit; essentially everyone will be subject to an antidegradation review; while it may be a simple solution, it could generate a huge engineering nightmare; if antidegradation is a difficult process, then exceptions are important, if antidegradation is easy, the exceptions are not needed; if we have a de minimis, we need a cap; at some point you can mess up the biology of the stream by changing the flow regime.
 3. The workgroup agreed that while SEA 431 only discussed a de minimis for OSRWs, a de minimis should include high quality waters.
 4. After lunch, Rae Schnapp noted, while the morning discussion was interesting, the idea of changing de minimis to water quality standards instead of loading capacity would not be workable. She thought the workgroup should focus on implementation procedures. Rae suggested a five percent de minimis based on loading capacity with a ten percent cap (of assimilative capacity) that would apply to non-BCC OSRWs and high quality waters. She was concerned of the lack of numbers for nutrients and suggested holding back on those. This prompted a discussion which also involved: Jane Dustin, Bill Beranek, Albert Ettinger, Dave Pfeifer, Art Umble, Neil Parke, Charlotte Read, Lonnie Brumfield, Mary Ellen Gray and Kari Evans. Discussion issues included: when would the assimilative capacity be established? (at the theoretical no load); streams with $Q_{7,10}$; sixty-five percent of streams are zero-flow streams; mixing zones are not allowed for Lake Michigan; the cap; no criteria for CBOD. When asked where the proposed numbers came from, Albert responded that they were numbers consistent with U.S.EPA guidance, West Virginia and what was going on in Indiana. He added they are numbers they would not sue over.
- D. Dave Kallander introduced the topic of exceptions. The language for exceptions was introduced in the 1997 Great Lakes Initiative. The discussion also included: Rae Schnapp, Lonnie Brumfield, Albert Ettinger, Jane Dustin, Mary Ellen Gray, Art Umble, Bowden Quinn, Kari Evans, Dave Pfeifer, Charlotte Read, Neil Parke and Bill Beranek. Discussion issues included: why “significant”?; an existing illegal discharge should not be allowed to prevent an antidegradation demonstration; not clear what “same body of water” means; exceptions should not be allowed; some

could qualify for a “quick” antidegradation demonstration, focusing on the process it could be just not on an application; there could be two categories, one the burden is on the applicant and for the other the burden is on the agency; can there be a presumption for social/economic benefit?; antidegradation analysis often hinges on whether you have looked at enough options and whether you have picked the right one, for social/economic have not found a way to make it objective; the agency should not allow discharge to a biologically significant stream using a general permit.

- E. Although not on the agenda, as Albert Ettinger was present, the topic of general permits was discussed. Discussion issues included: does the law speak clearly?; do not think there is public participation in Indiana; do not think general permits belong in exceptions; “permit by rule” provides more public participation than the permitting process would; why can’t the review of a storm water permit include a quick antidegradation review?; West Virginia could mean the end of a general permit; increasing water retention from 48 to 72 hours is not cost effective; putting the NOI and storm water plan on the Internet allows for chance of review while still keeping the process relatively quick.
- F. Mary Ellen suggested topics for the next meeting: activities that are not considered a significant lowering of water quality; de minimis; and, antidegradation demonstration. To allow staff time to prepare, she suggested the next meeting to be held in January. After some discussion it was decided to hold the next meeting December 15, 2003 to discuss antidegradation demonstration. The agency will not prepare any new materials for that meeting. The meeting will be held from 10:00a.m. to 1:00p.m. E.S.T. in the Lafayette area. The location will be announced later.

Post Script

Since this meeting, Jane Dustin head of the Izaak Walton League of America's Water Quality Committee, passed away. We all mourn her passing and our thoughts and condolences go out to her husband Tom and family. Additional information can be found in a local newspaper article:

<http://www.fortwayne.com/mld/fortwayne/news/local/7386581.htm>